



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF ELEMENTARY AND SECONDARY EDUCATION

January 11, 2021

The Honorable Eligio Hernandez Perez
Secretary of Education
Puerto Rico Department of Education
P.O. Box 190759
San Juan, PR 00919-759

Dear Secretary Hernandez Perez:

This is a response to the request from the Puerto Rico Department of Education (PRDE) to the U.S. Department of Education (the Department) for a waiver under sections 1125A(e)(3) and 8521(c) of the Elementary and Secondary Education Act of 1965 (ESEA) of the Title I, Part A (Title I) State-level maintenance of effort (MOE) requirement and the local educational agency (LEA) MOE requirement, respectively. Specifically, PRDE requested a waiver of the MOE requirements for the period from July 1, 2017, to June 30, 2018, which was the preceding fiscal year to Federal fiscal year 2019 allocations.

To help ensure that Title I funds are not used as general aid to replace State and local funds, the Education Finance Incentive Grants (EFIG) formula, one of the four Title I formulas, has a State-level MOE requirement. Section 1125A(e)(1) of the ESEA requires that either the aggregate or per-pupil expenditures for free public education within a State in the preceding fiscal year be at least 90 percent of those respective expenditures in the second preceding fiscal year in order for a State educational agency (SEA) to meet the Title I EFIG MOE requirement. Similarly, section 8521(a) of the ESEA requires for Title I and the other programs covered by ESEA section 8521 (covered programs) as defined in 34 CFR § 299.5(b) an LEA to maintain its expenditures from State and local resources either in the aggregate or on a per-pupil basis at no less than 90 percent of the previous year's expenditure level.

Because PRDE is a unitary system, the State and LEA MOE requirements under sections 1125A(e) and 8521, respectively, are functionally the same requirement for PRDE. That is, when the Department determines that PRDE meets the State EFIG MOE requirement, PRDE also meets the LEA MOE requirements in ESEA section 8521. The reverse is also true; if the Department determines that PRDE does not meet the State EFIG MOE requirement, it also does not meet the MOE requirement in ESEA section 8521.

If PRDE does not meet these MOE requirements and also failed to meet them in one or more of the five immediately preceding fiscal years, section 1125A(e)(2) requires the Department to reduce Puerto Rico's allocations for covered programs. Sections 1125A(e)(3) and 8521(c) of the ESEA allow the Department to grant a waiver of MOE requirements if the waiver would be

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equitable due to a precipitous decline in the State's financial resources or an exceptional or uncontrollable circumstance.

Under the authority of section 1125A(e)(3) and 8521(c) of the ESEA, I am approving PRDE's MOE requests because PRDE experienced both an uncontrollable circumstance and a precipitous decline in financial resources that resulted in not maintaining effort in the preceding fiscal year for fiscal year 2019 allocations. Specifically, according to PRDE, the widespread damage caused by hurricanes Maria and Irma in fall 2017 led to redistribution of financial resources to rebuild the island's infrastructure. Additionally, PRDE cited the rapid decline of Puerto Rico's economy, including several emergency liquidity actions and consequent legislation and efforts to reduce expenditures, as a reason for the precipitous decline of financial resources.

Absent this natural disaster and debt crisis, PRDE would have maintained effort. Consequently, I believe that it would be equitable to approve PRDE's request because the failure to meet the MOE requirement in the preceding fiscal year for fiscal year 2019 allocations was a product of the circumstances described above.

Please note, by receiving a waiver of the MOE requirement from the Department for PRDE's fiscal year 2019 allocation, PRDE has effectively maintained effort for that fiscal year. Accordingly, in subsequently determining whether PRDE has failed to maintain effort for one or more of the five immediately preceding fiscal years, the Department would count the year in which PRDE received a waiver as a year of maintaining effort.

If you have any questions, please contact my staff at OESE.titlei-a@ed.gov.

Sincerely,

/s/

Frank T. Brogan
Assistant Secretary
for Elementary and Secondary Education

cc: Maria de los A. Lizardi Valdés
Acting Auxiliary Secretary of Federal Affairs